

AMENDED IN ASSEMBLY JANUARY 14, 2010

AMENDED IN ASSEMBLY JANUARY 4, 2010

AMENDED IN ASSEMBLY JULY 9, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 656

Introduced by Assembly Member Torrico
(Coauthors: Assembly Members Beall, Block, Blumenfield, Chesbro,
Coto, Eng, Bonnie Lowenthal, Ma, Price, and Skinner)
(Coauthor: Senator Coauthors: Senators DeSaulnier and Price)

February 25, 2009

An act to add Chapter 8 (commencing with Section 99500) to Part 65 of Division 14 of Title 3 of the Education Code, and to add Part 21 (commencing with Section 42001) to Division 2 of the Revenue and Taxation Code, relating to postsecondary education, and making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 656, as amended, Torrico. California Higher Education Endowment Corporation: oil and gas severance tax.

(1) Existing law establishes the University of California, under the administration of the Regents of the University of California, the California State University, under the administration of the Trustees of the California State University, and the California Community Colleges, under the administration of the Board of Governors of the California Community Colleges, as the 3 segments of public postsecondary education in this state.

This bill would establish the California Higher Education Endowment Corporation (CHEEC). The bill would establish an oversight board to govern the CHEEC and would require that board to appoint the chief executive officer of the CHEEC. The bill would require the CHEEC to annually allocate the moneys in the continuously appropriated California Higher Education Fund, which would be created by the bill, to the California Community Colleges, the California State University, and the University of California, as specified. The bill also would authorize the board to invest the moneys in the fund in accordance with prescribed procedures.

(2) Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would impose an oil and gas severance tax, ~~on and after January 1, 2010,~~ upon any producer for the privilege of severing oil or gas from the earth or water in this state for sale, transport, consumption, storage, profit, or use, as provided, at a ~~specified~~ rate of 12.5% of the gross *value of the* product. The tax would be administered by the State Board of Equalization, and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law. The bill would require the board to deposit all tax revenues, penalties, and interest collected pursuant to these provisions, except as specified, in the California Higher Education Fund.

Because this bill would expand application of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:

3 (a) A recent study by the Public Policy Institute of California
4 stated that California's need for college-educated workers is
5 outpacing the state's ability to produce them, and that gap is
6 expected to widen in the future.

7 (b) Forty-one percent of California workers will need a
8 bachelor's degree to meet the state's projected economic demand
9 in the year 2025 if current trends continue, yet changes in the
10 California workforce make it unlikely that this demand will be
11 met.

12 (c) The percentage of college-educated workers has increased
13 significantly in recent years, from 28 percent in 1990 to 34 percent
14 in 2006, but the rate of increase is expected to slow because people
15 between 50 years of age and 64 years of age currently have the
16 highest levels of education, and that group will reach retirement
17 age by 2025.

18 (d) Groups such as Latinos will make up 40 percent of the state's
19 labor force by 2020, but only 12 percent of Latinos are on pace to
20 hold a bachelor's degree by that date.

21 (e) As the growth in the number of college-educated workers
22 slows, the supply of workers with a high school diploma or less
23 education is projected to exceed economic demand, resulting in
24 lower wages and fewer job opportunities for those workers, and
25 resulting in higher wages for college-educated workers as demand
26 for their skills increases.

27 (f) The lack of an educated workforce will deny the state the
28 ability to draw upon the critical resources that are necessary to
29 assist with the state's current economic crisis and to support future
30 economic growth.

31 (g) The current budget proposals will jeopardize the enrollment
32 of 10,000 students into the California State University system.

33 SEC. 2. It is the intent of the Legislature that this act provide
34 additional sources of higher education funding in order to keep up
35 with the growing demand for a skilled labor force.

36 SEC. 3. Chapter 8 (commencing with Section 99500) is added
37 to Part 65 of Division 14 of Title 3 of the Education Code, to read:

1 CHAPTER 8. THE CALIFORNIA HIGHER EDUCATION
2 ENDOWMENT CORPORATION

3
4 Article 1. General Provisions

5
6 99500. As used in this chapter, the following terms have the
7 following meanings:

8 (a) “Board” means the oversight board described in subdivision
9 (a) of Section 99505.

10 (b) “Corporation” means the California Higher Education
11 Endowment Corporation established pursuant to Section 99502.

12 (c) “Director” means the chief executive officer of the
13 corporation appointed pursuant to Section 99506.

14 (d) “Fund” means the California Higher Education Fund
15 established pursuant to Section 42147 of the Revenue and Taxation
16 Code.

17 (e) “Public postsecondary education institution” means the
18 California Community Colleges, the California State University,
19 and the University of California.

20 99502. The California Higher Education Endowment
21 Corporation is hereby established for purposes of implementing
22 this chapter.

23
24 Article 2. Oversight Board

25
26 99505. (a) (1) The corporation shall be governed by an
27 oversight board, which shall be composed of the following voting
28 members:

29 (A) Two members appointed by the Board of Trustees of the
30 California State University.

31 (B) Two members appointed by the Regents of the University
32 of California.

33 (C) Two members appointed by the Chancellor of the California
34 Community Colleges.

35 (D) Two members appointed by the Senate Committee on Rules.

36 (E) Two members appointed by the Speaker of the Assembly.

37 (F) One member appointed by the Treasurer.

38 (G) One member appointed by the Superintendent of Public
39 Instruction.

1 (H) One member who is a student enrolled in a public
2 postsecondary educational institution at the time of the
3 appointment. The member appointed pursuant to this subparagraph
4 shall be enrolled in a public postsecondary educational institution
5 for the duration of his or her term, which shall be two years.

6 (2) (A) At least one member appointed pursuant to paragraph
7 (1) shall be a nonmanagement employee of the California State
8 University.

9 (B) At least one member appointed pursuant to paragraph (1)
10 shall be a nonmanagement employee of the University of
11 California.

12 (b) The oversight board shall also include the following ex
13 officio, nonvoting members:

14 (1) The Chancellor of the California State University.

15 (2) The President of the University of California.

16 (3) The Chancellor of the California Community Colleges.

17 (c) The Legislature requests that the Regents of the University
18 of California and the President of the University of California
19 comply with the membership requirements in subparagraph (B)
20 of paragraph (1) of subdivision (a) and paragraph (2) of subdivision
21 (b).

22 (d) Except as specified in subparagraph (H) of paragraph (1) of
23 subdivision (a), each of the members identified in subdivisions (a)
24 and (b) shall be appointed to serve a term of four years.

25 (e) The members of the board shall annually select a member
26 to serve as the chairperson of the board.

27 99506. (a) The board shall appoint a director, who shall be
28 the chief executive officer of the corporation. This position is
29 designated as a confidential position and is exempt from civil
30 service under subdivision (e) of Section 4 of Article VII of the
31 California Constitution.

32 (b) The director shall serve at the pleasure of the board.

33 (c) The board may delegate to the director any power, duty,
34 purpose, function, or jurisdiction that the board may lawfully
35 delegate, including the authority to enter into and sign contracts
36 on behalf of the corporation.

37 (d) The director may delegate to his or her designee any power,
38 duty, purpose, or jurisdiction that may be lawfully delegated.

39 99508. (a) The board shall select an auditing firm to conduct
40 periodic audits as provided in subdivision (b) to determine if the

1 funding allocated pursuant to Section 99510 is being appropriately
2 used to fund direct classroom instruction in compliance with this
3 chapter. The auditing firm shall submit a report of the results of
4 the audit to the board.

5 (b) The three segments of the public postsecondary education
6 institution receiving funding from the California Higher Education
7 Fund shall be audited at least once every six years, with the audits
8 occurring alternately between the three public postsecondary
9 education segments every two years. An audit of a public
10 postsecondary education segment may occur independently of the
11 six-year cycle if the board determines that a more immediate audit
12 is necessary.

13 (c) The independent audits shall be funded with any investment
14 returns from the fund.

15 (d) The board shall select a different auditing firm to perform
16 the audits at least every six years to ensure the audits are conducted
17 in a fair and equitable manner.

18 (e) If the board determines through the audits performed
19 pursuant to this section that any campus or related administrative
20 office of any segment that receives funding from this chapter is
21 found to have improperly *used* or otherwise improperly
22 administered moneys allocated under this chapter, the board shall
23 take the following disciplinary actions:

24 (1) Upon a first finding, the board shall place the recipient
25 campus or related administrative office on probation status and
26 require the recipient campus or related administrative office to
27 submit a remediation plan as a condition of receiving funding
28 under this chapter.

29 (2) Upon finding that a recipient campus or related
30 administrative office has subsequently mishandled funds allocated
31 under this chapter within five years of a finding pursuant to
32 paragraph (1), the board shall bar the recipient campus or related
33 administrative office from receiving funds made available under
34 this chapter during the following fiscal year.

35 (3) Upon finding that a recipient campus or related
36 administrative office has subsequently mishandled funds allocated
37 under this chapter within five years of a finding pursuant to
38 paragraph (2), the board shall bar the recipient campus or related
39 administrative office from receiving funding under this chapter.

(f) The board may allow a campus or related administrative office that has been barred from receiving funding pursuant to paragraph (3) of subdivision (e) to apply for funding under this chapter after five years have passed since the campus or related administrative office was barred from receiving funding pursuant to paragraph (3) of subdivision (e).

99509. The board may adopt regulations necessary or appropriate to implement its powers and duties under this chapter in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

Article 3. Powers and Duties of the California Higher Education Endowment Corporation

99510. The corporation may hire employees as it deems necessary to implement this chapter.

99512. (a) The corporation shall annually allocate the moneys in the California Higher Education Fund, for purposes of funding direct classroom instruction for higher education, as follows:

(1) Fifty percent to the California State University.

(2) Twenty-five percent to the University of California.

(3) Twenty-five percent to the California Community Colleges.

(b) The board shall annually allocate a portion of the funds made available in paragraph (2) of subdivision (a) to provide supplemental funding for the operations of the Charles R. Drew University of Medicine and Science.

(c) The board shall ensure that a portion of the money allocated pursuant to subdivision (a) is directed to campuses with nursing programs located in counties it determines to have the most need. Need in a county shall be established based on consideration of all of the following factors:

(1) Counties with a registered nurse to population ratio equal to or less than 500 registered nurses per 100,000 individuals.

(2) County unemployment rate.

(3) County level of poverty.

(d) The funding established pursuant to this chapter shall be used to supplement, not supplant, existing levels of state funding for the California State University, the University of California, and the California Community Colleges. Institutions of higher

1 education in any academic year shall receive an amount which is
2 no less than the average amount that has been appropriated for
3 institutions of higher education during the five most recent fiscal
4 years preceding the enactment of this chapter.

5 99514. (a) The board has exclusive control of the investment
6 of the fund. Except as otherwise restricted by the California
7 Constitution and by law, the board may, in its discretion, invest
8 the assets of the fund through the purchase, holding, or sale of any
9 investment, financial instrument, or financial transaction, if the
10 investment, financial instrument, or financial transaction is prudent
11 in the informed opinion of the board.

12 (b) The board may itself make any investment authorized by
13 law or sell any security, obligation, or real property in which
14 moneys in the fund are invested, by affirmative vote of a majority
15 of the board, or by the same affirmative vote, may from time to
16 time adopt an investment resolution that shall contain detailed
17 guidelines by which to designate the securities and real property
18 that are acceptable for purchase or sale. While the resolution is in
19 effect, securities and real property may be purchased for investment
20 by an officer or employee of the board designated by it for that
21 purpose, and sales of securities may be consummated by the officer
22 or employee under the conditions prescribed. Purchases and sales
23 of securities shall be reported to the board, on a monthly basis, at
24 its next regular meeting.

25 (c) Any investment transaction decisions made during a closed
26 session pursuant to paragraph (16) of subdivision (c) of Section
27 11126 of the Government Code shall be by rollcall vote entered
28 into the minutes of that meeting. The board, within 12 months of
29 the close of an investment transaction or the transfer of system
30 assets for an investment transaction, whichever occurs first, shall
31 disclose and report the investment transaction at a public meeting.

32 (d) In addition to the other investments authorized by this article,
33 the board may invest in real estate, leases of real estate, and
34 improvements on real estate for business or residential purposes
35 as an investment for the production of income.

36 SEC. 4. Part 21 (commencing with Section 42001) is added to
37 Division 2 of the Revenue and Taxation Code, to read:

PART 21. OIL AND GAS SEVERANCE TAX LAW

42001. This part shall be known, and may be cited, as the Oil and Gas Severance Tax Law.

42002. For purposes of this part, the following definitions shall apply:

(a) “California Higher Education Fund” or “CHEF” means the account that is created by Section 42147 for purposes of depositing proceeds generated from the taxes levied pursuant to this part to fund direct classroom instruction for higher education.

(b) “Gas” means all natural gas, including casing head gas, and all other hydrocarbons not defined as oil in subdivision (e).

(c) “Gross value” means the sale price at the mouth of the well, including any bonus, premium, or other thing of value, paid for the oil or gas, as determined by a rolling 30-day average daily value, as established by the market price of the product. The board shall determine the base indexes from which the average shall be calculated. If the oil or gas is exchanged for something other than cash, if there is no sale at the time of severance, or if the relation between the buyer and the seller is such that the consideration paid, if any, is not indicative of the true value or market price, then the board shall determine the value of the oil or gas subject to the tax based on the cash price paid to the producer for like quality oil or gas in the vicinity of the well.

(d) “Higher education” means the California Community Colleges, the California State University, and the University of California.

(e) “Oil” means petroleum, or other crude oil, condensate, casing head gasoline, or other mineral oil that is mined, produced, or withdrawn from below the surface of the soil or water in this state.

(f) “Political subdivision of the state” includes any local *public* entity, as defined in Section 900.4 of the Government Code.

(g) “Producer” means any person who takes oil or gas from the earth or water in this state in any manner; any person who owns, controls, manages, or leases any oil or gas well in the earth or water of this state; any person who produces or extracts in any manner any oil or gas by taking it from the earth or water in this state; any person who acquires the severed oil or gas from a person or agency exempt from property taxation under the United States Constitution or other laws of the United States or under the

1 California Constitution or other laws of the State of California;
2 and any person who owns an interest, including a royalty interest,
3 in oil or gas or its value, whether the oil or gas is produced by the
4 person owning the interest or by another on his, her, or its behalf
5 by lease, contract, or other arrangement.

6 (h) “Product” means either a barrel of oil, which means 42
7 United States gallons of 231 cubic inches per gallon computed at
8 a temperature of 60 degrees Fahrenheit or gas, as measured per
9 thousand cubic feet (Mfc) at a base pressure of 15.025 pounds per
10 square inch absolute and at a temperature base of 60 degrees
11 Fahrenheit.

12 (i) “Production” means the total gross amount of oil or gas
13 produced, including the gross amount thereof attributable to a
14 royalty or other interest.

15 (j) “Severed” or “severing” means the extraction or withdrawing
16 from below the surface of the earth or water of any oil or gas,
17 regardless of whether the extraction or withdrawal shall be by
18 natural flow, mechanical flow, forced flow, pumping, or any other
19 means employed to get the oil or gas from below the surface of
20 the earth or water, and shall include the extraction or withdrawal
21 by any means whatsoever of oil or gas upon which the tax has not
22 been paid, from any surface reservoir, natural or artificial, or from
23 a water surface.

24 (k) “Stripper well” means a well that has been certified by the
25 ~~board~~ *Division of Oil, Gas, and Geothermal Resources in the*
26 *Department of Conservation* as an oil well incapable of producing
27 an average of more than 10 barrels of oil per day during the entire
28 taxable month *or a gas well that is incapable of producing more*
29 *than 60 thousand cubic feet of gas per day*. Once a well has been
30 certified as a stripper well, that stripper well shall remain certified
31 as a stripper well until the well produces an average of more than
32 10 barrels of oil per day during an entire taxable month.

33 ~~42010. On and after January 1, 2010, there~~ *There* is hereby
34 imposed an oil and gas severance tax upon any producer for the
35 privilege of severing oil or gas from the earth or water in this state
36 for sale, transport, consumption, storage, profit, or use. ~~The tax~~
37 ~~shall be applied equally to all portions of the gross value of the~~
38 ~~product and shall be imposed at the rate of 12.5 percent of the~~
39 ~~gross product.~~ *use, at the rate of 12.5 percent of the gross value*

1 *of the product, and the tax shall be applied equally to all portions*
2 *of the gross value of the product.*

3 42011. Except as otherwise provided in this part, the tax shall
4 be upon the entire production in this state, regardless of the place
5 of sale or to whom sold or by whom used, or the fact that the
6 delivery may be made to points outside the state.

7 42012. The tax imposed by this part shall be in addition to any
8 other tax that may be imposed with respect to the severing of oil
9 or gas or transactions related thereto, including, without limitation,
10 any ad valorem taxes imposed by the state, or any political
11 subdivision of the state, or any local business license taxes that
12 may be incurred as a privilege of severing oil or gas from the earth
13 or water or doing business in that locality. There shall be no
14 exemption from payment of an ad valorem tax related to
15 equipment, material, or property by reason of the payment of the
16 gross severance tax pursuant to this part.

17 42013. The tax imposed by this part shall not be passed through
18 to consumers by way of higher prices for oil, natural gas, gasoline,
19 diesel, or other oil or gas consumable byproducts, such as propane
20 and heating oil. The board shall monitor and, if necessary,
21 investigate any instance where producers or purchasers of the oil
22 or gas have attempted to gouge consumers by using the tax as a
23 pretext to materially raise the price of oil, natural gas, gasoline,
24 diesel, or other oil or gas consumable byproducts, such as propane
25 and heating oil.

26 42014. Two or more producers that are corporations and are
27 owned or controlled directly or indirectly, as defined in Section
28 25105, by the same interests shall be considered as a single
29 producer for purposes of application of the tax prescribed in this
30 part.

31 42015. There shall be exempted from the imposition of the oil
32 and gas severance tax imposed pursuant to this part, oil or gas
33 produced by a stripper well in which the average value of oil or
34 gas is less than three-quarters of the average gross value of the
35 product as of January 1 of the prior year.

36 42016. There shall be exempted from the imposition of the oil
37 or gas severance tax imposed pursuant to this part, all oil or gas
38 owned or produced by any political subdivision of this state,
39 including that political subdivision's proprietary share of oil or

1 gas produced under any unit, cooperative, or other pooling
2 agreement.

3 42020. The tax imposed by this part is due and payable to the
4 board quarterly on or before the last day of the month next
5 succeeding each calendar quarter.

6 42022. The board may prescribe those forms and reporting
7 requirements as are necessary to implement the tax, including, but
8 not limited to, information regarding the location of the well by
9 county, the gross amount of oil or gas produced, the price paid
10 therefor, the prevailing market price of oil or gas, and the amount
11 of tax due.

12 42112. In all proceedings under this part, the board may act
13 on behalf of the people of the State of California.

14 42145. The board shall administer and collect the tax imposed
15 by this part pursuant to the Fee Collection Procedures Law (Part
16 30 (commencing with Section 55001) of Division 2). For purposes
17 of this part, the references in the Fee Collection Procedures Law
18 to “fee” shall include the tax imposed by this part and to “feepayer”
19 shall include a person required to pay the oil and gas severance
20 tax.

21 42146. The board shall, upon appropriation, be reimbursed for
22 expenses incurred in the administration and collection of the tax
23 imposed by this part.

24 42147. The California Higher Education Fund is hereby created.
25 Moneys in the fund are continuously appropriated to the California
26 Higher Education Endowment Corporation.

27 42168. With the exception of payments of refunds and
28 reimbursement to the board for expenses incurred in the
29 administration and collection of the tax imposed by this part, all
30 taxes, interest, penalties, and other amounts collected pursuant to
31 this part shall be deposited into the California Higher Education
32 Fund.

33 SEC. 5. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

3 *SEC. 6. Section 4 of this act shall become operative on the first*
4 *day of the first calendar quarter commencing more than six months*
5 *after this act is enacted.*

6 ~~SEC. 6.~~

7 *SEC. 7.* This act is an urgency statute necessary for the
8 immediate preservation of the public peace, health, or safety within
9 the meaning of Article IV of the Constitution and shall go into
10 immediate effect. The facts constituting the necessity are:

11 In order to quickly mitigate the impacts of funding reductions
12 to institutions of higher education, it is necessary that this act take
13 effect immediately.